

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of)	Docket No. 99-13
)	
Amendment of Section 73.202(b))	RM-9428
Table of Allotments)	
FM Broadcast Stations)	
(Palacios, Texas))	

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**OPPOSITION TO
MOTION TO STRIKE**

Sandlin Broadcasting Co., Inc. ("Sandlin"), by its undersigned counsel, hereby submits its Opposition to the Motion to Strike filed on April 26, 1999 by Prawn Broadcasting Company ("Prawn"). In its Motion, Prawn incorrectly alleges that Sandlin violated *ex parte* rules by soliciting individuals to file *ex parte* comments with the Commission. Prawn also asks for sanctions against Sandlin.

Prawn is doing its best to make a mountain out of a molehill and to side-step the real issues. Most of the letters filed with the Commission were in fact attached as exhibits to Sandlin's Reply Comments and therefore served upon opposing counsel. Sandlin was entitled to file these letters, which mostly reflected the genuine concerns of officials and members of the community of Bay City, Texas, and the surrounding area about issues directly involving the public safety. Contrary to Prawn's allegations, all the letters were expected to be attached to Sandlin's Reply Comments to support Sandlin's arguments that a public safety issue exists with respect to changing frequencies in Bay

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City due to the fixed-frequency emergency receivers and the Emergency Plan for the area. Unfortunately, a few of the letters were submitted by their authors, concerned local citizens unfamiliar with the Commission's procedures, directly to the Commission without Sandlin's knowledge and without copies having been sent to Sandlin for submission as part of its pleading

The letters attached to Sandlin's Reply Comments were duly served on opposing counsel and were not *ex parte* at all. Although the letters attached to Sandlin's Reply Comments were concededly addressed to the Commission, they were the *originals* of the letters, not copies of letters already filed. So Prawn's wild speculation, based on the dates of the letters, that they had been independently filed with the Commission and then subsequently attached to Sandlin's pleading, is simply incorrect.

Prawn also complains that some of the letters were essentially similar. Nothing nefarious is lurking here, either. Sandlin did provide some draft language to persons in the community who were interested in writing letters that could be attached as exhibits to the pleading, but that does not mean that the language was not the message that sender intended to convey.

Additionally, the notion that Sandlin was "whipping up" the community for the express purpose of making *ex parte* presentations that would be slipped by opposing counsel for the purpose of influencing the merits of the proceeding is utter nonsense. Moreover, it is directly negated by the fact that Sandlin itself submitted the letters as attachments to its pleading original letters sent to it.

While Prawn is correct that some letter writers in the community sent their letters directly to the Commission and did not serve opposing counsel, they did so in good faith

and as a result of their genuine concern about the potential impact of Prawn's proposals on local public safety in the Bay City area. To the extent that these few directly-filed letters are deemed to be impermissible *ex parte* documents, the Commission may decline to consider them part of the record or be influenced by them.

However, it makes no sense to strike the letters attached as appendices to the Reply Comments, since they are not *ex parte* submissions at all – as noted before, the originals of the letters were attached to the Commission's original file copy, and all were served on opposing counsel together with the Reply Comments. The real reason that Prawn wants to strike these letters is that they evidence the severe public interest problem raised by Prawn's counterproposal (which, as shown in Sandlin's Reply Comments, was also procedurally defective): the fixed-frequency emergency radios necessary to protect life and limb, and the area Emergency Plan itself would be jeopardized if KMKS had to shift frequencies. In addition, significant additional, unnecessary, and probably unrecoverable costs would be imposed on the citizens and governmental units in the area to revise the Plan and change the frequencies of the radios to attempt to mitigate the harm. Prawn does not want the Commission to consider this significant issue.

Sanctions are clearly not appropriate in this case. Sandlin did not attempt to obtain *ex parte* letters. Sandlin properly solicited letters to support an argument in its Reply Comments that would be (and most were) allowed for attachment to its pleading. This clearly does not amount to intentional solicitation of *ex parte* presentations and merits no sanctions.


Finally, Prawn's outrageous implication that Sandlin was somehow attempting to mislead members of the Bay City community is baseless. As pointed out in Sandlin's

Reply Comments, Prawn has disregarded the Commission's rules by filing a faulty counterproposal which suggests changes to KMKS-FM Bay City that are essentially unrelated to the purpose of this rulemaking, and are not necessary to obtain the benefits to the two Matagorda County communities being considered. It is Prawn that is trying to mislead the Commission by attempting to make the change to KMKS a necessary part of an essentially unrelated series of transactions, with serious consequences not only for KMKS but for the Bay City area.

Sandlin regrets that some of its potential exhibits for its Reply Comments were separately filed with the Commission by individuals without service on opposing counsel. Beyond that, Prawn's accusations and speculations are mere puffery, and a waste of the Commission's valuable time.

Respectfully submitted,

SANDLIN BROADCASTING CO., INC.

By 

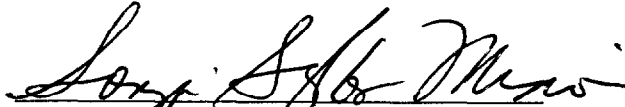
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CERTIFICATE OF SERVICE

I hereby certify on this 11th day of May, 1999, that copies of the foregoing
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